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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,675	12/04/2003	Thomas J. Bachinski	12929.1076USC1	8465

7590 09/22/2004
Attention of Matthew A. Doscotch
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EXAMINER

LIEU, JULIE BICHNGOC

ART UNIT	PAPER NUMBER
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2636

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,675

Applicant(s)

BACHINSKI ET AL.

Examiner

Julie Lieu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/4/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Drawings***

1. The drawings are objected to because blocks in figs. 1 and 2 are not labeled with legends. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and

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useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 18-38 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 17-37 of prior U.S. Patent No. 6,774,802. This is a double patenting rejection.

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-17 and 39-40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,774,802.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the combination of claims 1-16 of the present application claims the same limitations as claims 1-16 of US'802.

Claim Objections

6. Claims 39 and 40 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The limitations recited in claims 39 and 40 have already been recited in their parent claims 1 and 17, elements d and e, respectively.

Claim Rejections - 35 USC § 103

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-17 and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glidewell et al. (US Patent No. 5,319,698) (cited by applicant) in view of Kass et al. (US Patent No. 5,189,392) and Breed et al. (US Patent No. 6,179,326).

Claim 1:

Glidewell et al. (Glidewell) discloses a system comprising:

- a. At least one sensor assembly 16 for detecting contamination in ambient air, the sensor assembly including a communication device 24,26 that produces a first emergency signal upon determining the existence of the pre-determined level of toxic contamination
- b. A central processor 18 including:
 - i. A receiving device 56 for receiving the first emergency signal from the communicating device of the sensor assembly
 - ii. A least one transmitter 20 capable of transmitting a second emergency signal
- c. A messaging unit 60 energized in response to the second emergency signal from the central processor transmitter, the messaging unit operating to notify emergency personnel that the sensor assembly has detected the predetermined level of toxic contamination.

The reference fails to disclose (a) at least one deactivation device to suspend operation of an appliance and (b) at least one activation device energized in response to the second emergency device operating to reduce the level of toxic contamination within the home.

Regarding (a), the concept of deactivating a appliance which is the source of causing the detected substance is conventional in the art as taught by Kass et al. wherein a gas valve is closed to interrupt a fuel supply to combustion unit when a predetermined amount of carbon monoxide is detected. In light of this teaching, one skilled in the art would have readily recognized incorporating this concept in the system of Glidewell because it would help to correct the problem as soon as possible, even before a monitoring personnel arrives.

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Regarding (b), neither Glidewell nor Kass discloses an activation device energized in response to the second emergency signal to operate to reduce the level of toxic communication within the home. However, the idea of using an exhaust fan to expel toxic gas to the exterior of a dwelling is well known in the art as taught by Breed wherein when harmful gas is detected, a device is energized to break the windows (figure 11A and 11B) of a vehicle and to use an exhaust fan expel the toxic gas built up inside the vehicle. In light of this teaching, it would have been obvious to one skilled in the art to apply this concept in the system of Glidewell and Kass because it further enhance the safety feature of the system.

Claim 2:

It appears that the sensor assembly and the central processor in Glidewell do not form a single unit construction. However, the ideas of making a system integral or separate would not constitute an inventive step. Thus, it would have been obvious to one skilled in the art to form the central processor 18 and sensor 16 in one single unit as desired, the function of the device would not thereby be modified.

Claim 3:

In Glidewell, a plurality of sensor assemblies is in electronic communication with the central processor.

Claim 4:

Though it is not clear whether each one of the sensors in Glidewell are located near each one of the appliances or not, it would have been obvious to one skilled in the art to locate each sensor approximate appliances in the combined system of Glidewell and Kass because it would give clear indication of which one of the appliances is exactly the source of the problem so that

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appropriate corrective actions can be taken. Further, Glide implicitly suggests this feature since it favors the identification of particular assembly.

Claim 5:

It would have been obvious to one skilled in the art to have a corresponding one of plurality of deactivation devices to suspend operation of the appliance because it is only necessary to stop the source that causes the problem.

Claim 6:

The first emergency signal produced by the sensor is identifiable by the central processor.

Claim 7:

It would have been obvious to one skilled in the art to deactivate only the appliance which causes the problem because it is not necessary to shut down the entire appliances within the dwelling.

Claim 8:

The deactivation device in Kass includes a shut off mechanism, wherein the appliance is a gas-operated appliance, the shut-off mechanism operating to suspend gas flow to the gas-operated appliance.

Claim 9:

The messaging unit 68 is a telephone unit capable of dialing an emergency number and playing a pre-recorded message upon receipt of the second emergency signal from the central processor.

Claim 10:

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The combined system as discussed above includes an air evacuation apparatus to assist in reducing the level of toxic contamination from the vehicle. One of skilled in the art would have readily recognized the use of the combined system in a house because it is also desirable to evacuate dangerous air from a house for safety.

Claim 15:

The contaminated air in Breed is a toxic gas.

Claim 16:

The toxic gas is carbon monoxide.

Claim 17:

Glidewell et al. (Glidewell) discloses a system comprising:

- a. A plurality of sensor assemblies 16 for detecting contamination in ambient air, the sensor assembly including a communication device 24,26 that produces a first emergency signal upon determining the existence of the pre-determined level of toxic contamination
- b. A central monitoring means 18 capable of receiving 56 the first emergency signal from the communication device of the sensor assembly and transmitting a second emergency signal
- c. Means 60 energized in response to the second emergency signal from the central processor transmitter to alert emergency personnel.

The reference fails to disclose (a) means for activating an air evacuation device and (b) means for deactivating an appliance upon receipt of the second emergency signal from the central monitoring means.

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Regarding (a), neither Glidewell nor Kass discloses an activation device energized in response to the second emergency signal to operate to reduce the level of toxic communication within the home. However, the idea of using an exhaust fan to expel toxic gas to the exterior of a dwelling is well known in the art as taught by Breed wherein when harmful gas is detected, a device is energized to break the windows (figure 11A and 11B) of a vehicle and to use an exhaust fan expel the toxic gas built up inside the vehicle. In light of this teaching, it would have been obvious to one skilled in the art to apply this concept in the system of Glidewell and Kass because it further enhance the safety feature of the system.

Regarding (b), the concept of deactivating a appliance which is the source of causing the detected substance is conventional in the art as taught by Kass et al. wherein a gas valve is closed to interrupt a fuel supply to combustion unit when a predetermined amount of carbon monoxide is detected. In light of this teaching, one skilled in the art would have readily recognized incorporating this concept in the system of Glidewell because it would help to correct the problem as soon as possible, even before a monitoring personnel arrives.

Claim 39:

Messaging unit 60 is energized in response to the second emergency signal from the central processor transmitter, the messaging unit operates to notify emergency personnel that the sensor assembly has detected the predetermined level of toxic contamination.

Claim 40:

Messaging unit 60 is energized in response to the second emergency signal from the central processor transmitter to alert emergency personnel.

Allowable Subject Matter

9. Claims 18-38 are allowed.

Allowable Subject Matter

10. Claims 11-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Stern, US Patent No. 6,110,038, discloses a system for detecting and purging carbon monoxide.

Murphy, US Patent NO. 5,576,739, discloses a carbon monoxide safety system.

Hartman et al, US Patent No. 6,380,852, discloses a power shut-off that operates in response to prespecified remote conditions.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie Lieu whose telephone number is 571-272-2978. The examiner can normally be reached on Mon-Fri 9AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Hofsass can be reached on 571-272-2981. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Julie Lieu', with a long, sweeping horizontal stroke extending to the right.

Julie Lieu
Primary Examiner
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Sept. 18, 04